CHAN TAI TAI & ANOR. v OFFICIAL ASSIGNEE, F.M.

[C. A. (Mathew C.J. (F.M.), Whyatt C.J. (S) and Buhagiar J.) November 14, 1956]

[K. L. — F.M. Civil Application No. 4 of 1956]

Bankruptcy Rules, 1921, r. 88(b) — Time for entering appeal and serving notice thereof — Application to extend time — Court of Appeal Rules, 1948, r. 11.

This was an application for an extension of time for the filing of a notice of appeal against the judgment given on a motion by the Official Assignee. The notice of appeal was rejected by the Registrar of the Court of Appeal on the ground that under rule 88(b) of the Bankruptcy Rules, 1921 the time for entering the appeal and serving notice thereof is fixed at fourteen days from the date of signing, entering or otherwise perfecting the judgment or order appealed from. On appeal it was submitted that the Court of Appeal Rules 1948 provided that the period for bringing an appeal shall be one month from the date on which the judgment or order appealed against was pronounced and in the present case the notice of appeal was presented for filing more than fourteen days but less than one month from the date of the judgment. It was further submitted that there is a conflict between rule 88(b) of the Bankruptcy Rules 1921 and rule 11 of the Court of Appeal Rules and that rule 11 of the Court of Appeal Rules should prevail.

Held: (1) it is an established principle that unless it is specifically so provided by law, a general provision does not impliedly override a special provision and therefore there is no conflict between the Court of Appeal Rules and the Bankruptcy Rules;

(2) on the facts no reasons had been shown by the applicant for the exercise of the discretion to extend the time and therefore the application must be dismissed.

Cases referred to :—

(1) *Re Coles & Ravenshear* (1907) 1 K.B. 1.

(2) *Re Manchester Economic Building Society* 24 Ch. D. 488.

(3) *International Financial Society v. City of Moscow Gas Co.* 7 Ch. D. 241.

COURT OF APPEAL.

S. D. K. Peddie for the applicants.

M. G. Neal for the respondent.

Buhagiar J. (delivering the judgment of the Court of Appeal) : — This is an application for an extension of time for the filing of notice of appeal against the judgment given on a motion by the Official Assignee. The notice of appeal was rejected by the Registrar of the Court of Appeal on the ground that under Rule 88(b) of the Bankruptcy Rules 1921 the time for entering the appeal and serving notice thereof is fixed at fourteen days from the date of signing, entering or otherwise perfecting the judgment or order appealed.

The ground of appeal as stated in the affidavit filed by the solicitors for the appellant is that under section 2 of the Court of Appeal Rules, 1948 it is provided that the provisions of the Schedule thereto shall apply to all matters and proceedings in the Court of Appeal and under Rule 11 of the Schedule it is provided that the period for bringing an appeal shall be one month from the date on which the judgment or order appealed against was pronounced, and in the present case the notice of appeal was presented for filing more than fourteen days but less than one month after the date of the judgment.

On behalf of the applicant it was submitted that there is a conflict between Rule 88 (b) of the Bankruptcy Rules, 1921, and Rule 11 of the Court of Appeal Rules and that in view of the provisions of section 10(2) of the Rule Committee Ordinance, 1948, under which the Court of Appeal Rules were made, the provisions of those Rules should prevail.

In the opinion of this Court there is no conflict between the Court of Appeal Rules and Bankruptcy Rules, 1921; Rule 88 of the last mentioned Rules contains general and special provisions; after laying down that the provisions and procedure for the time being in force respecting appeals from the Supreme Court in its ordinary civil jurisdiction shall apply to appeals in bankruptcy, that Rule goes on to make certain modifications, one of which is that in appeals in bankruptcy the time for entering the appeal and serving notice thereof on the respondent is to be fourteen days from the date of signing, entering or otherwise perfecting the judgment or order appealed from instead of one month. It is an established principle that unless it is specifically so provided by law, a general provision does not impliedly override a special provision. On behalf of the appellant it was also submitted that the matter is, in any case, not free from doubt and that if the Court accepts that view then special leave to appeal after the expiration of the period of time should be granted, under the provision of section 531 of the Civil Procedure Code, section 36(2) of the Courts Ordinance, 1948 and rule 11 of the Court of Appeal Rules.

We do not consider the discretion to extend the time should be exercised in favour of the applicant in this case; we agree with the view expressed by Farwell L.J. in *Re Coles and Ravenshear*[1], at p. 8 :—

"A mere slip or blunder on the part of the litigant's legal adviser cannot, in my view, entitle him to anything at all."

In that case Farwell L.J. also referred to the case of *In re Manchester Economic Building Society*[2], where Cotton L.J. at p. 499 said :—

"This, I think, may be laid down, that, when the Rules and the Act of Parliament say that an appeal is to be within a certain time unless special leave shall be given by the Court of Appeal to appeal after that time, the Court does not grant leave unless there is something which, in the opinion of the Court, entitles the person who applies for extension of time to be relieved against the bar established by the Orders and the Act of Parliament. It has been called an equity, but that is not a proper term; it is something which entitles him to ask for the indulgence of the Court to ask to be relieved from the legal bar that there is in the Orders and Act of Parliament."

(See also opinions to the same effect expressed in *International Financial Society v. City of Moscow Gas Co.*[3]).

For the above reasons the application is dismissed with costs.

Application dismissed.

Solicitors : *Bannon & Bailey.*

SHE ENG GEK v. D. A. DE SILVA

[A. C. J. (Buhagiar J.) December 6, 1956]

[K. L. — Civil Appeal No. 30 of 1956]

Landlord and Tenant — Claim for possession on ground that tenant had committed a breach of the municipal laws — Proof of conviction — Control of Rent Ordinance, 1948.

In this case the learned President had made an order for vacant possession of certain premises at Kuala Lumpur on the ground that the defendant had committed a breach of the Municipal Ordinance and was therefore excluded from the protection of the Control of Rent Ordinance, 1948. At the trial the learned President ordered a copy of a conviction recorded against the defendant on a charge of an offence under section 144(10)(d) of the Municipal Ordinance; this was a conviction on a plea of guilty which was accepted by the Magistrate. The defendant appealed.

Held: (1) the conviction in the criminal proceedings is no evidence in civil proceedings but the plea of guilty to the charge being an admission which may support the plaintiff's case is admissible;

(2) the admission in this case by the plea of guilty was that the defendant had failed to comply with the order of the President of the Municipal Council to demolish the partitions at the premises and there was no admission that the defendant had made unauthorised major alterations and additional construction in breach of the Municipal Ordinance;

(3) the burden of proving the breach was on the plaintiff and on the facts the plaintiff had failed to discharge the burden on him.

Cases referred to :—

(1) *Zbytniewski v. Broughton* (1956) 3 All E.R. 349.

(2) *Hollington v. Hewthorn & Co. Ltd.* (1943) 2 All E.R. 35.

CIVIL APPEAL.

R. R. Chelliah for the appellant.

S. D. K. Peddie for the respondent.

Buhagiar J. : — This is an appeal from the decision in the Magistrates' Court at Kuala Lumpur where judgment was given for the plaintiff/respondent who prayed for an order of vacant possession of premises known as No. 25 Chow Kit Road, Kuala Lumpur and for double rent (monthly rental $24.00) from the 1st day of July, 1955, to the date of vacation of the said premises.

The plaintiff/respondent relied on section 13(1)(k) of the Control of Rent Ordinance, 1948 and under the provisions of that section he obtained an order from the Rent Assessment Board granting him permission to apply to the Court for the ejectment of the defendant/appellant from the said premises. The learned President held that the defendant/appellant had committed a breach of the Municipal Ordinance and was therefore excluded from protection of the Control of Rent Ordinance, 1948. To prove that the defendant/appellant had committed a breach of the municipality laws the plaintiff/respondent tendered a copy (Ex.P.2) of a conviction recorded against the defendant/appellant on a charge of an offence under section 144(10)(d) of the Municipal Ordinance, this was a conviction on a plea of guilty which was accepted by the Magistrate. The learned President admitted such document in evidence. The grounds of appeal with which it is necessary to deal are :—

(a) that the learned President was wrong in admitting Exhibit P. 2 in evidence; and

(b) that the learned President failed to direct his mind to or in the alternative failed to attach sufficient importance to the evidence of the defendant and his witnesses and the decision of the learned President was not reasonable or supported or justified by the evidence in the case.

With regard to the first ground of appeal it is settled law that a conviction obtained in criminal proceedings is no evidence of a person's guilt in civil proceedings : See *Zbytniewski v. Broughton*[1] where at p. 357 Hodson L.J. said :—

"The learned county court judge appeared to take the view that, in order to bring that matter home in civil proceedings, it would be necessary to do it by means of a conviction. So far from that being the case, it appears to me to be settled law that a conviction would be no evidence of his guilt in civil proceedings. That was decided in **Hollington v. Hewthorn & Co. Ltd.**[2]".

In the latter case, however, Goddard L.J. at p. 42 stated :—

"In the present case, had the defendant before the magistrates pleaded guilty, or made some admission in